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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,629	04/01/2004	Hartley Frank Young	21854-00042-US	7362

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EXAMINER

LE, MARK T

ART UNIT PAPER NUMBER

3617

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/814,629	YOUNG, HARTLEY FRANK	
	Examiner	Art Unit	
	Mark T. Le	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendments filed on December 6, 2005. Applicant's amendments and remarks have been carefully considered.
2. Claims 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, last line, "the deep post" lacks antecedent basis.

In claim 11 and 13, lines 1-2, the expression "the face of the projections which abut said sides of the support shoulders includes a resilient tab" is confusing. It is suggested to be changed to -- [the] faces of the projections which abut said sides of the support shoulders include[s a] resilient tabs -- .

Claim 15 contains multiple occurrences of double recitations. Note for example, the pair of projections and the recess have already been recited in claim 12, and the resilient tab has already been recited in claim 13.

Proper corrections are required.

3. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Besenschek (US 6,045,052).

Besenschek discloses a rail seat as recited in the instant claim, including tie 14, rail fastening support shoulders 28, rail pad 18, and insulator 24; wherein, the projections at the four corners of the rail pad include parts 32 that are thicker than the rest of the rail pad, and the middle portion of area 38 of the rail pad is a web which is a thin extension of the rail pad for positioning insulator 24.

4. Claims 9-10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bensenshek (US 6,045,052) in view of Pilsesi (US 6,786,459).

Bensenshek is applied above.

Regarding the instant claimed projections extending from the sides of the support shoulders, as recited in instant claims 9 and 14, consider the support shoulders shown in Figures 2b and 4 of Pilsesi; wherein, each said support shoulder has ribs that are readable as projections extending from the sides of the support shoulder, and said support shoulder projections abut the associated rail pad projections to locate the rail pad in a position that inherently allows accommodation of the post of an insulator, as broadly claimed. In view of Pilsesi, it would have been obvious to one skilled in the art to substitute support shoulders, similar to that shown in Figures 2b and 4 of Pilsesi, for the support shoulders of Bensenshek so as to achieve expected functions/advantages thereof.

5. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Besenshek (US 6,045,052) in view of Karbus (US 4,971,247).

Besenshek is applied above.

Regarding the instant claimed resilient tabs, consider nylon tabs 29 on the pad projections, as described in lines 55-60, column 3 of Karbus. As to the instant claimed resiliency, note that nylon, even hard nylon, inherently has at least a minimal degree of resiliency.

In view of Karbus, it would have been obvious to one skilled in the art to provide tabs on the pad projections of Besencheck, in a manner similar to that taught by Karbus, so as enhance the retention of the pad relative to the support shoulders.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 9 above and further in view of Karbus (US 4,971,247).

Besencheck is applied above.

Regarding the instant claimed resilient tabs, consider nylon tabs 29 on the pad projections, as described in lines 55-60, column 3 of Karbus. As to the instant claimed resiliency, note that nylon, even hard nylon, inherently has at least a minimal degree of resiliency.

In view of Karbus, it would have been obvious to one skilled in the art to provide tabs on the pad projections of Besencheck, in a manner similar to that taught by Karbus, so as enhance the retention of the pad relative to the support shoulders.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri (2:00-8:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Mark T. Le
Primary Examiner
Art Unit 3617

mle
8/30/05